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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

CEARIACO CABRELLIS,

Defendant and Appellant.

C089019

(Super. Ct. No. 16FE002475)

A jury found defendant Ceariaco Cabrellis guilty of three counts of robbery and one count of attempted robbery. The jury also found true allegations that defendant personally caused great bodily injury as to one count of robbery and personally used a firearm as to all four counts. The trial court sentenced defendant to an aggregate term of 27 years eight months in prison.

Defendant now contends the evidence is insufficient to support the great bodily injury enhancement because substantial evidence does not show that he, rather than codefendant Frank Moppins, injured the victim. We disagree and affirm.

We will also direct the trial court to correct a clerical error on the abstract of judgment.

BACKGROUND

The victim, his girlfriend, and two other friends went to a park one day to take photographs. When they arrived at the park, they saw two or three men who asked them

if they smoked weed. The victim and his friends climbed a wall separating the park from some railroad tracks where they intended to take pictures. After they were over the wall, they noticed that two of the men, defendant and Moppins, had followed them over the wall. Defendant and Moppins pulled out guns, ordered the victim and his friends to lie down, and patted them down. Defendant and Moppins had their sweatshirt hoods up and told the victim and his friends not to look at their faces.

When one of the assailants patted down the victim's girlfriend, the victim jumped up and disobeyed an order to get back down, so the assailant struck him in the face twice with his gun. The victim dropped to the ground and he was kicked while in a fetal position. The assailants subsequently left, taking some items from the group. The victim and his friends escaped to a nearby house, where a woman helped them call 911. The victim suffered a fractured orbital socket and a broken nose from the blows to his face, and required stitches underneath his eye and behind his ear.

The identity of the man who struck the victim in the face was a key issue at trial. The victim testified that defendant was the one who patted him down and then hit him twice after he stood up. The victim identified defendant during a field showup shortly after the crime, based in part on defendant's distinctive neck tattoo. The victim was able to see the tattoo, even though defendant was wearing a hood, because of the way the hood was tied.

Defense counsel impeached the victim's testimony by establishing that, at the preliminary hearing, the victim testified defendant was not involved in the robbery. The victim explained that he changed his testimony because he was intimidated by an unknown individual in the hallway outside the preliminary hearing, although he did not report the incident at the time, and later told an investigator from the district attorney's office that he had not been intimidated. The victim also testified that, during the field showup, he was upset the deputy sheriffs were delaying his trip to the hospital.

The victim's girlfriend testified that defendant was not the one who hit the victim. She testified that two men, one with lighter skin and one with darker skin, robbed them, and that the darker-skinned man struck the victim. She identified Moppins as the darker-skinned man and defendant as the lighter-skinned man. Some time after she identified the two, however, she sent an e-mail to the prosecutor in the case stating that she was no longer sure about the identification of defendant and Moppins. At trial, she explained that she was now certain of her identifications, and had only sent the e-mail because she had gone to high school with Moppins and she was friends with his brother. On cross-examination, she acknowledged that she had been on the ground looking up during the robbery, and that she was not looking around at the time.

One of the victim's friends, P.B., testified that they were robbed by two men, one wearing a red hoodie and one wearing a blue hoodie. During the robbery, P.B. was prone on the ground and was not looking at his friends. While the man with the red hoodie held him at gunpoint and took his wallet and phone, he heard somebody get hit and looked up to see the victim holding his own head. Then the man in the red hoodie told P.B. not to look up and hit him in the head three times. When speaking to deputies afterwards, P.B. stated that the man with the red hoodie looked like the brother of a friend he knew from high school. When shown two suspects in a field showup, P.B. was not able to identify either man, although in a later photo lineup, he identified Moppins as the man in the red hoodie. The last of the victim's three friends was unable to identify either of the two men.

DISCUSSION

Defendant claims there is no substantial evidence to support the true finding for the great bodily injury enhancement because it has not been established that he, rather than Moppins, injured the victim. Defendant argues the victim was the only witness who identified him as the person who struck him in the head, but the victim had problems with credibility. We disagree that the evidence is insufficient.

To assess the sufficiency of the evidence, we review the whole record in the light most favorable to the judgment “to determine whether it discloses substantial evidence -- that is, evidence which is reasonable, credible, and of solid value -- such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Johnson* (1980) 26 Cal.3d 557, 578.) “In deciding the sufficiency of the evidence, a reviewing court resolves neither credibility issues nor evidentiary conflicts. [Citation.] Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact. [Citation.] Moreover, unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction. [Citation.]” (*People v. Young* (2005) 34 Cal.4th 1149, 1181.)

Penal Code section 12022.7, subdivision (a) provides: “Any person who personally inflicts great bodily injury on any person other than an accomplice in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for three years.” The enhancement applies only “to those who directly perform the act that causes the physical injury to the victim.” (*People v. Cole* (1982) 31 Cal.3d 568, 579.)

At trial, the victim testified that defendant was the one who struck him twice in the head, causing a fracture in his orbital socket and a broken nose. He identified him in the courtroom, as well as in a field showup shortly after the crime. The victim explained that he was able to identify defendant based on a unique neck tattoo, which the victim was able to see because of the particular way defendant tied his hood. Moreover, P.B. testified that two men robbed him and his friends at gunpoint. Although P.B. did not see who hit the victim, one of the men -- whom he later identified as Moppins -- was going through P.B.’s pockets when the victim was hit. Because Moppins could not have been searching P.B. at the same time he struck the victim in the head, the jury could reasonably conclude defendant was the one who struck the victim.

Defendant notes the victim changed his testimony between the preliminary hearing and trial, the victim may have been biased in favor of Moppins, and the victim's girlfriend disagreed with the victim's identification. But those arguments were asserted at trial and constituted credibility challenges that were squarely within the jury's purview to resolve. On this record, the jury could reasonably have concluded that defendant caused the victim's injuries, and defendant's contention lacks merit.

Although the parties did not mention it in their appellate briefs, we have identified a clerical error in the abstract of judgment. The trial court orally imposed an aggregate sentence of 27 years eight months, but the abstract of judgment incorrectly indicates total time as 27 years four months. Because this appears to be a clear clerical error, we will direct the trial court to correct the abstract of judgment without further briefing in the interest of judicial economy. Any party aggrieved may petition for rehearing. (Gov. Code, § 68081.)

DISPOSITION

The judgment is affirmed. The trial court is directed to correct the abstract of judgment to reflect the orally imposed aggregate sentence of 27 years eight months, and to forward a certified copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation.

/S/
MAURO, J.

We concur:

/S/
RAYE, P. J.

/S/
BLEASE, J.